

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3322 OF 2000

Narayan Korga Pujari,)
adult, Occupation Service,)
residing at Post Shirdhon/Borgaon,)
Taluka Kavate mahankal,)
District Sangli.).. Petitioner

Vs.

1. Gandhi Education Society,)
Kundal, through its Secretary,)
having its Registered Office)
at Kundal, Taluka Tasgaon,)
District - Sangli.)
2. Education Officer (Secondary),)
Zilla Parishad, Sangli,)
District Sangli.)
3. N.J. Jaunjal,)
adult, Occupation - Service,)
as a Headmaster of Pratinidhi)
High School, Kundal,)
Taluka Tasgaon, District Sangli.)
4. S.B.Chavan,)
adult, Occupation : Service)
as Assistant Headmaster in)
Pratinidhi High School, Kundal,)
Taluka Tasgaon,)
District Sangli.)
5. State of Maharashtra.).. Respondents
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Shri S.G.Kudle for the Petitioner.

Shri P.G.Lad for the respondent No.1.

Shri C.R.Sonawane, AGP for the respondent Nos.2 and 5.
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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 29TH AUGUST, 2006

ORAL JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. Heard the learned advocates for the petitioner and the respondent No.1 as well as the learned AGP for the respondent Nos.2 and 5. None present for the respondent Nos.3 and 4, though served.

2. By the present petition, the petitioner challenges the seniority of the petitioner fixed by the respondent No.1 and approved by the respondent No.2 whereby the petitioner has been shown junior to the respondent Nos.3 and 4. According to the petitioner, the petitioner has to be enlisted as senior to the respondent Nos.3 and 4, more particularly, in view of the provisions comprised under Note-3 to clause (2) of Schedule F of the Maharashtra Employees of Private Schools Rules, 1981, hereinafter called as "the said Rules".

3. It is the case of the petitioner that though initially the petitioner was employed as untrained teacher in the institution of the respondent No.1, after appointment of the respondent Nos.3 and 4, yet the petitioner and the said two respondents obtained the training qualification in education, i.e. B.Ed,

on the same day i.e. 10th June, 1975. All the three teachers having entered the category "C" under the Schedule F of the said Rules, in terms of the Note-3 thereof, their seniority has to be decided on the basis of their age. The petitioner, being eldest amongst the three, ought to have been shown as senior most followed by the respondent No.4 and thereafter by the respondent No.3. However, the respondent No.1 has shown the respondent No.3 to be the senior most followed by the respondent No.4 and thereafter the petitioner being junior most and the said seniority has been approved by the respondent No.2. The said seniority was fixed and circulated in the year 1997. Immediately thereafter, the petitioner objected to the same. However, the request of the petitioner was not accepted by the respondents, and hence the present petition.

4. The respondents in their affidavit have stated that the petitioner was born on 1st December, 1943, the Respondent No.4 was born on 11th April, 1947 and the Respondent No.3 was born on 1st June, 1948. All the three, i.e. the petitioner and the said two respondents, acquired B.Ed qualifications on 10th June, 1975. The date of joining as untrained teacher in the institution of the respondent No.1 has been

shown in the affidavit-in-reply as regards the petitioner as 1st July, 1970, as regards the respondent No.4 as 26th June, 1970 and as that of the respondent No.3 as 8th June, 1970. These facts are not in dispute.

5. The contention of the respondents is, however, that bearing in mind the decision of this Court in **Saramma Varghese v. Secretary/President, S.I.C.E.S.Society**, reported in 1989 Mh.L.J. 951, the seniority of the three teachers have been fixed, and therefore, no fault can be found with the said decision.

6. The clause (2) of the Schedule F of the said Rules provides for the guidelines for fixation of seniority of teachers. It provides that for the purpose of fixation of seniority of teachers in the secondary schools, Junior Colleges of Education and Junior College classes attached to Secondary Schools the teachers should be categorised as Categories A, B, C and D. As far as the Category 'C' is concerned, it refers to holders of educational qualifications. The Note 3 thereunder reads thus:-

"In the case of teachers whose date of

continuous appointment in one and the same category is common, the teacher who is senior by age will be treated as senior."

7. While dealing with the issue, with reference to the age factor, on acquiring the qualification of graduation being a trained teacher, the Division Bench of this Court in **Saramma Varghese's case (supra)**, after taking into consideration all the rules and regulations applicable for such purposes, had observed that "a higher academic qualification too is not relevant for fixation of seniority of trained teachers". It was further ruled that "the only criterion for fixation of seniority of trained graduate teachers is the continuous officiation in such post of teacher, depending upon, their position on the ladder." It was also held that "once a person is a graduate teacher with B.Ed. degree she rank in seniority according to the date of continuous officiation."

8. Plain reading of the Note 3 quoted above and the decision of the Division Bench in **Saramma Varghese's case (supra)**, therefore, leaves no room for doubt that in case of the trained teachers when their entry in the said category is on the same day, their

seniority is to be decided based on the age of such teachers having common entry date in such category. Obviously, therefore, irrespective of the other qualifications and irrespective of the date of appointment as the untrained teachers, moment more than one teacher becomes a trained graduate teacher on the same date, the inter se seniority will have to be decided with reference to the age of respective teachers. The eldest to be shown as senior most. Applying this rule to the facts of the case, once it is not in dispute that the petitioner was eldest having born on 1st December, 1943 in comparison to the date of birth of the respondent Nos.3 and 4 who have been shown as senior most amongst the said three teachers. Similarly, the respondent No.4 who was born on 11th April, 1947, prior to the birth of the respondent No.3, ought to have been shown as 2nd in the seniority and the respondent No.3 having born on 1st June, 1948 to be the third one. The respondents having totally ignored this aspect of the matter and having enlisted the Respondent Nos.3 and 4 to be the senior to the petitioner, the said order of seniority cannot be accepted and sustained and is, therefore, liable to be quashed and set aside. The respondent No.1 be directed to re-fix the seniority of the petitioner along with the respondent Nos.3 and 4,

bearing in mind the observations made hereinabove, and the respondent No.2 be directed to take appropriate decision in that regard, albeit, without ignoring the observations made hereinabove.

9. Needless to say that on account of refixation of the seniority, the petitioner would be entitled for all the benefits arising out of his seniority over the respondent Nos.3 and 4.

10. In the result, therefore, the petition succeeds. The impugned order of seniority as far as it relates to the petitioner and the respondent Nos.3 and 4 is concerned, is hereby quashed and set aside, and the respondent Nos.1 and 2 are hereby directed to refix the seniority of the petitioner and the respondent Nos.3 and 4 within a period of three months from today and further to grant all monetary benefits which the petitioner and the respondent Nos.3 and 4 may be entitled to, on the basis of such refixation of seniority within a period of six months from the date of refixation of the seniority.

11. The rule is made absolute accordingly with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(NARESH H.PATIL, J)